

REGULATION TO ENSURE THE SANITARY AND SAFE OPERATION OF MARIJUANA ESTABLISHMENTS AND THE SALE OF MARIJUANA

A. Statement of Purpose and Authority:

Whereas, Massachusetts voters approved the regulation of the use and distribution of marijuana not medically prescribed on November 8, 2016, pursuant to Chapter 344 of the Acts of 2016, as amended by Chapter 55 of the Acts of 2017, an Act to Ensure Safe Access to Marijuana; and

Whereas, the prevention of the illegal sale and use of marijuana, particularly involving youth is a public health priority; and

Whereas, the state regulation at 935 CMR 500.000 allows for lawful local oversight and regulation, including local fee requirements; and

Whereas, Chapter 55 of the Acts of 2017 specifically allows municipalities to “adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments” specifically related to “the time, place, and manner of marijuana establishment operations and of any business dealing in marijuana accessories” provided that such restriction “is not unreasonably impracticable and are not in conflict” with the state statute or regulations regulating marijuana sales; and

Whereas, local oversight and inspection of marijuana establishments are within the legal authority of local boards of health to protect public health, safety and welfare; and

Whereas the Massachusetts Supreme Judicial Court had held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect public health by any rational means.”ⁱ

Therefore, in furtherance of its mission to protect, promote, and preserve the health and well-being of all City of Marlborough residents and pursuant to the authority granted to it pursuant to M.G.L. c. 111, §31, the Board of Health of Marlborough enacts a Regulation to ensure the sanitary and safe operation of marijuana establishments and the sale of marijuana.

B. Definitions:

Unless otherwise indicated, terms used throughout this regulation shall be defined as they are in 935 CMR 500.000 and in General Law, MGL c. 94G, 94I.

In addition, for the purposes of this regulation, the following words shall have the following meanings:

Adult-Use only retail tobacco store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products or offer of services is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Marlborough Board of Health.

Board of Health Agent: The Director of Public Health and any city employee designated by the board of health, which may include board of health, staff, law enforcement officers, fire officials and code enforcement officials.

Business Agent: An individual who has been designated by the owner or operator of any marijuana

Cannabis or Marijuana Products means cannabis or marijuana and its products unless otherwise indicated. Cannabis or Marijuana Products includes products that have been manufactured and contain cannabis or marijuana or an extract from cannabis or marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures. Cannabis or marijuana products are the equivalents of marijuana-infused products (MIPs) defined in 935 CMR 501.003.

Colocated Marijuana Operations (CMO) means an entity operating under both an RMD registration pursuant to 935 CMR 501.000: Medical Use of Marijuana, and under at least one Marijuana Establishment license pursuant to 935 CMR 500.000: Adult Use of Marijuana, on the same premise.

Colocated marijuana operations pertain to cultivation, product manufacturing, and retail, but not any other adult-use license.

Edible Marijuana Products: A marijuana product that is to be consumed by humans by eating or drinking.

Marijuana Accessories: Equipment, products, devices or materials of any kind that are intended or designed for use in ingesting, inhaling or otherwise introducing marijuana into the human body.

Marijuana Establishment: A marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of marijuana-related business licensed by the Cannabis Control Commission pursuant to 935 CMR 500.050 as a marijuana cultivator, craft marijuana cooperative, marijuana product manufacturer, independent marijuana testing laboratory, storefront marijuana retailer, delivery-only marijuana retailer, marijuana primary social consumption establishment, marijuana mixed-use social consumption establishment, marijuana research facility, marijuana transporter and marijuana micro-business.

Marijuana Products: Products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Operating Permit Holder: Any person engaged in the cultivation, sale, distribution or delivery of marijuana who applies for and receives an operation permit, or any person who is required to apply for an operating permit pursuant to these regulations, or his or her business agent.

Minimum Legal Sales Age: The age an individual must be before that individual can be sold a marijuana product in the municipality.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces rolled marijuana products solely for the individual's own personal consumption or use) that is can make rolled marijuana products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to an owner, operator, manager, proprietor or person in charge of any establishment, business, cultivation property or retail store.

Registered Marijuana Dispensary (RMD): A not-for-profit entity as defined in Chapter 369 of the Acts of 2012 with a registration in good standing that submitted an application for a registration to operate a medical marijuana treatment center to the Department of Public Health before July 28, 2017. Also known in accordance with Chapter 650-32 of the ordinances of the City of Marlborough as “Medical Marijuana Treatment Center”.

Self-Service Displays: Any display from which customers may select marijuana or a marijuana-infused product without assistance from an establishment.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes marijuana products.

C. Medicinal and Adult-use Marijuana Sales to Persons Under the Minimum Legal Sales Age Prohibited:

1. No Person shall sell Marijuana or Marijuana Products or permit Marijuana or Marijuana Products to be sold to an Individual under the minimum legal sales age unless a qualifying patient; or give Marijuana or Marijuana Products or permit Marijuana or Marijuana Products to be given to an Individual under the minimum legal sales age unless a qualifying patient. The minimum legal sales age for adult-use Marijuana, not medically prescribed, in Marlborough is 21.
2. Each Person selling or distributing Marijuana or Marijuana Products for adult use, not medically prescribed, shall verify the age of the Individual by means of a valid government-issued photographic identification containing the bearer's date of birth that the Individual is 21 years of age or older.
3. All retail sales of Marijuana or Marijuana Products for adult use, not medically prescribed, shall be face-to-face between the seller and the buyer and occur at the permitted location unless and until delivery of adult-use Marijuana Products is authorized and licensed under state regulation and then, in strict compliance with all applicable rules and regulations as well as the age limitation set forth herein. Medical Marijuana delivery shall be in accordance with state law and governing regulations

D. Marijuana Operating Permit:

1. No person shall sell, cultivate, deliver or otherwise commercially distribute marijuana products, as defined herein, within the City of Marlborough without first obtaining a Marijuana Operating Permit issued annually by the Marlborough Board of Health. Only owners of establishments with a permanent, non-mobile location in City of Marlborough are

eligible to apply for an operating permit at the specified location in the City of Marlborough except:

- a. All applicants shall certify that they are in compliance with all local and state laws, regulations and ordinances including proof of a current license with the Cannabis Control Commission and be prepared to show proof if requested.
2. No person shall gift marijuana or marijuana products to a consumer contingent upon the sale of any other product.
3. No person shall accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any marijuana product without charge.
4. As part of the Marijuana Operating Permit application process, the applicant will be provided with the Marlborough Board of Health regulations. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing all employees who will be responsible for marijuana sales regarding federal, state and local laws regarding the sale of marijuana and this regulation.
5. Each applicant who sells, cultivates, delivers or otherwise distributes marijuana is required to provide proof of a current license issued by the Cannabis Control Commission before a Marijuana Operating Permit can be issued.
6. A separate Marijuana Operating Permit, displayed conspicuously, is required for each marijuana establishment. The fee for which shall be determined by the City of Marlborough Board of Health annually.
7. A Marijuana Operating Permit is non-transferable. A new owner of a marijuana establishment must apply for a new permit.
8. Issuance of a Marijuana Operating Permit shall be conditioned on an applicant's consent to unannounced, periodic inspection of its/his/her marijuana establishment, including any business conducted off-site, to ensure compliance with this regulation.
9. A Marijuana Operating Permit will not be renewed by the department if the permit holder has failed to pay all taxes as a requirement for an annual permit renewal as well as fines.
10. A Marijuana Operating Permit may be subject to non-renewal if the establishment has sold a marijuana product to a person under the minimum legal sales age two times within the previous permit year and the time to appeal has expired. The permit holder may request a hearing pursuant to this regulation prior to non-renewal.

11. A retail marijuana establishment shall sell primarily marijuana and marijuana accessories. The sale of other products must be merely incidental. A retail marijuana establishment is prohibited from applying for or otherwise holding a tobacco sales permit. A retail marijuana establishment is also prohibited from holding a liquor license or selling or distributing any alcoholic beverage in any form.
12. All Marijuana Operating Permits expire annually on December thirty-first (31st). No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant.

E. Incorporation of 105 CMR 500.000 and 105 CMR 590.000:

The manufacture of all edible marijuana products and food products containing marijuana shall be conducted in a state-licensed marijuana manufacturing facility and in accordance with all applicable state regulations. Marijuana establishments and agents shall comply with 105 CMR 500.000, “Good Manufacturing Practices for Food” and 105 CMR 590.000, “Minimum Sanitation Standards for Food Establishments” relative to edible marijuana products.

F. Incorporation of 935 CMR 500.00:

Marijuana establishments and agents shall comply with 935 CMR 500.000.

G. Out-of-Package Sales:

The sale or distribution of edible marijuana products in any form other than an original factory wrapped package is prohibited, including the repackaging or dispensing of any edible marijuana product for retail sale.

H. Self-Service Displays:

All self-service displays of marijuana products are prohibited.

I. Vending Machines:

All vending machines containing marijuana products are prohibited.

J. Compliance with All Laws:

1. All cultivation, processing, manufacturing, delivery, sale and use of marijuana shall be conducted in compliance with all laws, ordinances, regulation or policies applicable to similar activities. This shall include, but not be limited to compliance with food service permit requirements, secondhand smoke regulations, electronic cigarette regulations, nuisance laws and all requirements associated with zoning and other local permitting.

2. The cultivation, processing, manufacturing, delivery, sale and use of marijuana shall not exempt any person or entity from complying with all state and local laws, ordinances, bylaws, regulations and policies. Violation of any other such law shall constitute a violation of this regulation and be subject to the fines and penalties described herein. Nothing in this regulation gives any immunity under federal law or poses an obstacle to federal enforcement of federal law.
3. Unless specified by any other state or local requirement, special permit, license or agreement as to the hours of operation of a marijuana establishment, the Marlborough Board of Health, in consultation with the Marlborough Police Department, and other Marlborough officials and departments may set limitations on the hours of operation of any marijuana establishment.
4. The Marlborough Board of Health may require the distribution of additional educational materials in marijuana establishments.
5. In no instance shall a Marijuana Operating Permit be issued to any Marijuana business which fails to comply with the City of Marlborough Zoning Ordinance.

K. Enforcement and Penalties:

1. Authority to inspect marijuana establishments for compliance and to enforce this regulation shall be held by the Marlborough Board of Health, its designees and the Marlborough Police Department.
2. Any person may register a complaint under this regulation to initiate an investigation and enforcement with the Marlborough Board of Health and its designees. Unscheduled compliance inspections shall be conducted at a minimum of three inspections annually.
3. If permissible by local ordinance, any fines or fees collected under this regulation shall be used for the administration and enforcement of this regulation and/or for any activities incidental to the regulation of the operation of marijuana establishments and the sale and use of marijuana.
4. It shall be the responsibility of the Marijuana Operation Permit holder and/the business agent to ensure compliance with all applicable sections of this regulation. Any marijuana establishment found to be in violation of the provisions of these regulations may receive a written warning citation, a fine, a Marijuana Operation Permit suspension, a Marijuana Operation Permit revocation.

5. Any permit holder or any person or entity charged with violation of any provision of this regulation shall receive a notice of violation from the Marlborough Board of Health or its designated agent. Unless waived by the permit holder, the Board of Health shall conduct a hearing to determine the facts of the violation, the appropriate corrective actions, the terms of suspension, if any, and/or issue a permit revocation order.
6. Prior to issuing any suspension or revocation, the Marlborough Board of Health shall provide the permit holder with notice of the intent to suspend or revoke a permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than 7 days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Marlborough Board of Health shall suspend or revoke the permit if the Board of Health finds that a violation of this regulation occurred.
7. Each day any violation exists shall be deemed to be a separate offense.

L. Variances:

1. A variance from this regulation may be requested in writing to the Marlborough Board of Health. A variance may be granted by the Marlborough Board of Health after a hearing at which time the applicant establishes the following:
 - a. Strict enforcement of this regulation would do manifest injustice; and
 - b. The granting of a variance shall not in any way impair the public health and safety or the environment.
1. The Board of Health may impose any conditions, safeguards and other limitations on a variance when it deems it appropriate to protect the public health and safety or the environment.

M. Severability:

If any provision of this regulation is declared invalid or unenforceable, the provisions shall not be affected thereby but shall continue in full force and effect.

N. Effective Date:

This regulation shall take effect immediately upon passage by the Board of Health.



Jesse J. Tennyson, MD, Chair



James Griffin, Vice Chair



Robin Williams

¹ Druzik et al v. Board of Health of Haverhill, 324 Mass. 129 (1949).